

REMARKS

The above-reference Office Action has been carefully reviewed and reconsideration thereof is respectfully requested.

The Examiner has rejected Claims 1, 2, and 3 under 35 USC 102(b) as being anticipated by Freeman et al. Applicant respectfully traverses this ground of rejection.

As amended, base Claim 1 now includes the limitation that the at least one zipper lies on a generally horizontal line. Support for this amendment is found from inspection of now-cancelled Claims 10 and 11.

Freeman et al. show a pair of pants with portions of the zipper lying on generally vertical lines.

Claims 4 and 6-11 have been rejected under 35 USC 103(a) as being unpatentable over Freeman et al. Applicant respectfully traverses this ground of rejection.

Whether or not Freeman et al. render obvious the subject matter of Claims 4 and 6-9, those claims depend from a claim that it is respectfully submitted is now allowable and, therefore, should be deemed allowable also.

The garment of Freeman et al. is directed, in part, to providing a flap on the seat of pants. It is respectfully submitted that a flap cannot be formed when the zipper or zippers lie on a generally horizontal line, as was the subject matter of now-cancelled Claims 10 and 11. As noted above, the limitations of those claims have now been inserted in Claim 1.

The garment of Freeman et al. would have to be modified, by doing without the flap, to place the zipper or zippers on a generally horizontal line. One purpose of the garment of Freeman et al. is to provide a garment with a flap so that a wearer of the garment can use the bathroom without having to remove the garment. Where the proposed modification would render the prior art invention being modified

AMENDMENT
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PATENT
390-102

unsatisfactory for its intended purpose, the proposed modification would not have been obvious. See *Tec Air Inc. V. Denso Mfg. Michigan*, 192 F3d 1353, 1360, 52 USPQ 1294, 1298 (CAFC 1999); *In re Gordon*, 733 F2d 902, 221 USPQ 1125, 1127 (CAFC 1984).

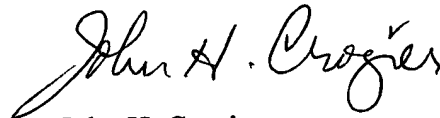
Claim 5 has been indicated as containing allowable subject matter. New Claim 12 is a conflation of Claims 1 and 5 as filed.

In view of the above amendments and remarks, it is respectfully submitted that the claims in the application, Claims 1-9 and 12, are allowable and early action in that regard is respectfully requested.

Should the Examiner have any questions as to the allowability of the claims or any suggestions with respect thereto, the undersigned would be grateful for the privilege of a telephone conference with the Examiner.

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Respectfully submitted,



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